

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

In the Matter of
DONNA M. VOGT

PETITION FOR HEARING

Respondent.

File No. S-03083(LX)

The staffs of the Bureau of Licensing & Compliance and the Enforcement Unit, Bureau of Registration & Enforcement, of the Division of Securities, Department of Financial Institutions, State of Wisconsin have conducted an investigation in this matter pursuant to sec. 551.56, Wis. Stats., and as a result thereof allege as follows:

1. Donna M. Vogt ("Vogt") is a licensed securities agent (CRD #1391717) with a last known business address at N2147 DD Campbellsport, WI 53010;
2. Regardless of what a customer told Vogt about their goals and risk tolerance, the New Account Form submitted by Vogt had the same goals and risk tolerance: Primary Objective of Growth and Medium Risk Tolerance and a Secondary Objective of Income with Medium Risk Tolerance and the vast majority also had Growth with High Risk Tolerance;
3. Vogt's actions, in filling out the New Account Forms in ways that did not match the customers' stated goals and risk tolerance provides a basis, pursuant to sec. 551.34(2), Wis. Stats., for the revocation of her license;
4. Based on this incorrect New Account Form, Vogt then made unsuitable securities recommendations to her customers. For example;
 - a. Customer EH was a 67 year old widow; her assets consisted of a small conservative annuity and her dairy farm. Vogt recommended that EH sell the recently purchased annuity, pay the surrender charges and IRS penalties, and invest the money in two high risk mutual funds;
 - b. Customer GB was a 62 year old retiree, whose investment objective and risk at his prior firm were, respectively, "income" and "conservative. His investments consisted of US Treasury Notes, FNMA notes, General Electric Bonds, and Merck stock. Vogt sold these investments and replaced them with high risk mutual funds;
5. Vogt's recommendations to EH and GB and others constitute recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer which is deemed pursuant to DFI-Sec 4.06(2)(i), Wis. Ad. Code to be a "dishonest or unethical business practice" or taking

- unfair advantage of a customer” and provides a basis, pursuant to sec. 551.34(1)(g), Wis. Stats., for the revocation of an agent’s license;
6. During November 2000, Vogt lent at least \$2500 to a customer;
 7. Lending money to a customer is deemed, pursuant to DFI-Sec 4.06(2)(a), Wis. Adm. Code to be a “dishonest or unethical business practice” or “taking unfair advantage of a customer” and provides the basis, pursuant to sec. 551.34(1)(g), Wis. Stats., for the revocation of Vogt’s license;
 8. Vogt bullied her clients by, among other things:
 - a. Requiring customers who dared to buy stocks she did not recommend to sign unsolicited trade letters (usually required for penny stocks, not NYSE companies) before she would initiate the transactions;
 - b. Requiring customers who dared to sell the mutual funds she did recommend to sign letters stating that they were refusing her advice before she would sell the funds;
 - c. Telling a customer who asked her to sell his investments because he needed cash that he should place his disabled daughter in a homeless shelter and sell her furniture to raise the additional money that he needed; and
 - d. Sending letters to the customers after they fired her describing the financial ruin that will befall them;
 9. Vogt’s actions described above constitutes a pattern of abuse or harassment and provides a basis, pursuant to sec. 551.34(2), Wis. Stats., for the revocation of her license;
 10. In connection with our investigation into Vogt’s sales activities, she wrote the Division a letter dated September 20, 2004, which stated in part, “I did not suggest that clients take out home equity loans and invest the money!”
 11. According to information and documents provided to the staff, Vogt has recommended to over a dozen of her clients that they take out a home equity loan and invest the proceeds;
 12. Vogt’s action, in filing the September 20 letter with the Division constitutes the filing of a statement with the Division that was false or misleading in violation of sec. 551.54, Wis. Stats.
 13. On at least one occasion Vogt had an assistant assume the identity of a former customer and call up a broker-dealer to obtain information about former customer’s new securities agent;
 14. Vogt’s actions, in conspiring and encouraging the assistant to violate sec. 943.201, (a class H felony) has violated sec. 939.31, Wis. Stats., a class H felony;

15. Vogt's felonious actions, as described above, constitute a basis, pursuant to sec. 551.34(2), Wis. Stats. for the revocation of her license;
16. Vogt has repeatedly mischaracterized or omitted facts in order to push her clients in the direction Vogt wanted them to go. For instance
 - a. In a letter to her clients R & A, dated January 29, 2001, Vogt wrote "I am taking this time again to remind you of the fact that individual stocks are extremely risky and can go down to zero." She then went on to discuss the individual stock in question, Johnson Controls, and suggest that the client sell it and replace it with the Oppenheimer Mid Cap fund. Upon information and belief, there was no negative information available to the public at that time about Johnson Controls. Vogt failed to disclose that the Oppenheimer Mid Cap fund:
 - i. Was a fairly new fund, having started only on December 1, 1997; and
 - ii. It had just finished a year when, according to Morningstar, it was in the bottom 1/3 of its class of mutual funds;
 - b. On September 28, 2002 in a letter to her client HV Vogt wrote that, "The law requires that I, your representative, must speak with you to close your account." There is no law that requires an agent to speak with a customer to close an account;
 - c. Vogt provided many of her customers with a "Retirement Planner Report" showing what a customer would have to invest in order to retire. The reports were given as an inducement to join her as a customer and contained assumptions that were without basis in fact, often projecting 1% inflation and 10-12% annual growth for the life of the investments;
17. Vogt's actions as described above are part of a course of business which operates or would operate as a fraud or deceit upon a customer in violation of sec. 551.41(3), Wis. Stats;

THEREFORE, the staffs of the Bureau of Registration & Compliance and the Bureau of Registration & Enforcement petition the Administrator to set a date for hearing for the revocation of Vogt's license or such other relief as the hearing officer deems appropriate

DATED this 2nd day of December, 2005


Helen E. Kluever
Examiner
Bureau of Licensing & Compliance


David A. Cohen
Supervising Attorney
Bureau of Registration & Enforcement